I do not think that the appointment of the applicant as principal trustee, nor the sole discretion conferred upon her by clause 9 of the will, can be regarded as giving her an uncontrollable or irresponsible discretion. I find that the Court can intervene in this matter and therefore it is necessary to consider the circumstances.

At the date of his will, the testator had five children, three of whom were at the time minors but these have now reached the age of twenty-one. In 1951 when a form of compulsory service was introduced in the Federation, the two younger sons went to China and they are now unable to return to the Federation and would not be admitted if they did. So far as they are concerned, it does not seem to be disputed that all that they could receive from the applicant in this country is $45 per month each by reason of certain restrictive financial regulations. The two who went to China are now both of age and are presumably earning their own living in China. The two sons in Malaya are both of age and as trustees agree that the applicant should have $750 a month maintenance. The only other child is a daughter who is now aged twenty-seven. Apparently she is not married and whether or not she earns her own living I do not know. But it seems that, apart from a possible remittance of $90 per month to the two young men in China, the applicant has only to support herself and possibly her daughter. The applicant states that after the reoccupation in 1946 up to at the end of April, 1949, she drew from the trustees $500 a month as an allowance. From the 1st May, 1949 till the end of August, 1949, she says that she drew $1,000 a month. She says that owing to the higher cost of living she requested the other trustees to increase her allowance to $1,500 a month from the 1st September, 1949 but they refused to agree. She admits that in August, 1951, she received a sum of $10,000 from the trustees. There is some dispute as to these dates and the amounts paid to her, but I am satisfied that she did originally receive $500 a month and for a period $1,000 a month. I am also satisfied that she received two other lump sums of $15,000 and $6,750 from the estate and a further sum of $500 on the 30th September, 1949. This information is contained in the affidavit of Ch'ng Ean Jin, one of the trustees who has no financial interest whatever in the estate. The applicant has not filed any affidavit in reply.

I do not think it is necessary to refer in detail to the affidavit of Ch'ng Ean Jin which will, of course, be available to any other Court which may be called upon to consider this matter. I would, however, point out that in the uncontradicted affidavit of Ch'ng Ean Jin it is stated that it was agreed at the meeting of the trustees in June, 1950, that all cheques made out on behalf of the estate must be signed by three trustees, of whom the applicant was one, and that the cheque book and pass book of bank account should be kept by the applicant. It is further stated that after the 21st October, 1950, the applicant made no further application for maintenance until the 25th July, 1951. Obviously, as the cheque book was in the possession of the applicant, no cheque could be made payable to the applicant except at her own instigation.

All the trustees, other than the applicant, are willing to pay the applicant as maintenance $750 per month as from the 1st September, 1951. In my opinion, having regard to the authorities which I have cited above, it is the duty of this Court to consider the interest of the beneficiaries other than the applicant, more particularly as I am told, and I think it is agreed, the time for distribution has now come under the terms of the will.

In all the circumstances I have decided to allow the applicant $750 per month as maintence as from the 1st September, 1951 until such time as distribution can be completed. I also make an order by consent that the costs between solicitors and clients be taxed and paid out of the estate. The allowance cannot of course be paid unless the applicant produces signed cheques for the other trustees to sign.

Order accordingly.

Solicitors — for the applicant: *Lovelace & Hastings;* for the 1st respondent: *M. N. Cumarasami;* for the 2nd respondent: *S. M. Yong & Co;* for the 3rd respondent: *T. K. Sen.*

SUPPAN v. PUBLIC PROSECUTOR.

[C. A. (Mathew, C.J., Wilson & Abbott, JJ.) March 24, 1954]

[K. L. — Criminal Appeal No. 20 of 1954]

Penal Code, s. 302 — Summing up — Assessors — Function of.

The function of the assessors is to give their opinions and their reasons therefor on such particular issues of the fact relevant to the charge as the Court may specify. It is not part of their functions to give their opinions as to what offence (if any) the accused is guilty of This is the function of the Judge who, after considering the opinions of the assessors, delivers judgment and convicts or acquits the accused.

CRIMINAL APPEAL.

R. P. S. Rajasooria for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by :—

Mathew, C.J. : — The appellant was charged with murder contrary to s. 302 Penal Code, and was convicted of culpable homicide not amounting to murder contrary to s. 304 Penal Code after the learned trial judge had considered the answers to certain questions on relevant issues of fact put by him to the assessors. Mr. Rajasooria's main ground of appeal is as follows :—

"The appellant contends that His Lordship the trial judge erred in law in the course of his summing up to the assessors he failed to direct them of their right to find him guilty of lesser offence other than murder and culpable homicide to wit: causing death by negligence under sections 304A Penal Code and sections 336, 337, 338 and 325 Penal Code. His Lordship misdirected the assessors by stating that the fracture of ribs necessarily caused death."

In our view, the first part of this ground of appeal is misconceived. The function of the assessors is to give their opinions and their reasons therefor on such particular issues of fact relevant to the charge as the Court may specify. It is not part of their functions to give their opinions as to what offence (if any) the accused is guilty of. This is the function of the judge who, after considering the opinions of the assessors, delivers judgment and convicts or acquits the accused. The learned trial judge put certain issues of fact to the assessors and in the course of his judgment considered their opinions.

Mr. Rajasooria complains, in the second part of this ground of appeal that the learned trial judge misdirected the assessors. The question put to the assessors was : — "Are you satisfied that the inflicting of that series of heavy blows was likely to cause death?" We can find no passage in the summing up in which the learned judge states that the fracture of the ribs necessarily caused death. The matter was put quite clearly to the assessors, and they were asked :— "Was that series of injuries considered as a whole likely to cause death?" To this question the first assessor answered "no", and the second assessor said that he did not think so. The learned trial judge disagreed with the opinions of the assessors on this issue of fact and dealt with it in his judgment as follows :—

"On this issue I dissent from the opinions of the assessors. It is purely a question of fact. I am well aware that it is a matter of experience that the human frame can sustain the most appalling injuries without death ensuing. Nevertheless, having considered the evidence of the doctor, I am satisfied in my mind that not considering any one blow or set of blows in isolation but considering the series of blows as a whole that did amount to an act that was likely to cause death."

In our view, no exception could be taken to the summing up or to the judgment, and the appeal was accordingly dismissed.

Appeal dismissed.

Solicitor for the appellant: *R. P. S. Rajasooria.*

LOW AH TOW v. YUSOF BIN KAYAB.

[C. A. (Murray-Aynsley C.J., Mathew C.J. (F.M.), and Brown J.) April 15, 1954]

[Singapore — Civil Appeal No. 30 of 1953]

Damages — Personal injuries arising from negligence — Quantum — Principle of assessment.

The respondent claimed for damages for personal injuries caused by the negligence of the appellant. This appeal concerned the quantum of damages only. The respondent was 23 years of age and was employed as a lorry driver at $120 p.m. He remained in hospital for three months and continued to go there twice a week for about six months. He used crutches for about three months after leaving hospital and according to the doctor's opinion he would have a permanent disability of his leg.

The learned trial Judge awarded the respondent $24,000 general damages.

Held: there are three elements to be considered in assessing general damages: (a) pain and suffering; (b) loss of future earnings; (c) the disadvantage arising from disablement apart from loss of earning power. While element (b) is related to probable earnings of the injured person, elements (a) and (c) are not so related and are the same regardless of his financial position. Wages here are lower than in England and damages relative to loss of earnings will naturally be generally less here than in England.

It was clear that the respondent must have suffered considerable pain and suffering and $5,000 would not be an excessive award. Although it is difficult to assess loss of future earnings an award of $9,000 in this case would be justified. As regards the third item an award of $10,000 would not be excessive.

DAMAGES.

J. C. Cobbett for the appellant.

D. H. Murphy for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J. [with whom Mathew, C.J. (F.M.) and Brown, J. concurred] : — The appeal concerned damages only. The respondent was at the time of the accident employed as a lorry driver by the Municipality at $120 per month. The injuries received by him were serious and permanent. At the trial the learned Judge awarded $24,000 as general damages. Against this the defendant appeals. In assessing general damages there are three elements to be considered; (a) pain and suffering; (b) loss of future earnings; (c) the disadvantage arising from disablement apart from loss of earning power. Under the first heading I think that a substantial sum should be awarded. The